

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Universal Service High-Cost Filing |) | WC Docket No. 08-71 |
| Deadlines |) | |
| |) | |
| Federal-State Joint Board on Universal |) | CC Docket No. 96-45 |
| Service |) | |
| |) | |
| Petition of MTA Communications, LLC, d/b/a |) | |
| MTA Wireless/Matanuska-Kenai, Inc. for |) | |
| Waiver of Sections 54.307 and 54.802(a) of the |) | |
| Commission's Rules |) | |

**PETITION OF MTA COMMUNICATIONS, LLC, D/B/A MTA
WIRELESS/MATANUSKA-KENAI, INC.,
FOR WAIVER OF SECTIONS 54.307 AND 54.802(A) OF THE COMMISSION'S RULES**

Pursuant to section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ MTA Communications, LLC, d/b/a MTA Wireless/Matanuska-Kenai, Inc. ("MTAW"), respectfully requests a waiver of the September 30, 2013 FCC Form 525 high-cost line count filing deadline set forth in sections 54.307 and 54.802(a) of the Commission's rules.² MTAW inadvertently failed to submit the requisite line count information by the September 30, 2013 deadline, but promptly made the filing with the Universal Service Administrative Company ("USAC") within fourteen business days of discovering the omission. MTAW also has taken steps to modify its line count filing procedures to ensure that the company does not miss any future filing deadlines.

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. §§ 54.307, 54.802(a).

Consistent with Commission precedent, good cause exists to grant MTAW's petition. Accordingly, the Commission should waive the September 30, 2013 FCC Form 525 line count filing deadline and direct USAC to accept MTAW's line count data. Failure to waive the deadline would result in the loss to MTAW of approximately \$1,000,000 in high-cost federal universal service funding, and would pose an undue hardship to the company and the more than 10,000 high-cost Alaska customers who rely upon MTAW to meet their telecommunications needs.

I. STATEMENT OF FACTS.

MTAW is an Alaska limited liability company that provides an array of telecommunications services to high-cost customers in Alaska that includes, but is not necessarily limited to: (1) traditional voice grade access to the public switched network; (2) local usage; (3) access to operator, directory assistance and emergency services; and (4) wireless cellular services, including a locally-based wireless alternative. MTAW has upgraded most of its network to state-of-the-art code division multiple access technology. MTAW has provided high quality telecommunications services to Alaska customers since 1991 and has received high-cost federal universal service funding since 2005. Currently, MTAW's service area extends across nearly 9,000 square miles and the company serves more than 10,000 high-cost Alaska telecommunications customers in approximately nineteen communities.³ MTAW operates a reliable network, transmits a high-quality signal, and provides high-quality service. MTAW has implemented multiple back-up and redundancy features that allow it to assure reliable, safe and

³ The communities in which MTAW provides high-cost telecommunications services include, but are not necessarily limited to, Big Lake, Butte, Chickaloon, Dëshka, Glenn Highway Flats, Goose Bay/Port McKenzie, Hatcher Pass, Meadow Lakes, Houston, Palmer, Petersville, Sheep Mountain, South Big Lake, Sutton, Skwenta, Talkeetna, Trapper Creek, Wasilla and Willow.

efficient telecommunications service to its rural Alaska customers. In remote areas, MTAW provides essential safety services for customers in distress including, but not necessarily limited to, customers engaged in outdoor activities for whom MTAW is the only signal they can receive.

With the exception of the September 30, 2013 filing, MTAW has timely filed all of its FCC Form 525 high-cost line count filings since 2004, when the company first began receiving high-cost funding. In this case, however, a few unique events transpired prior to the September 30, 2013 FCC Form 525 deadline that prevented MTAW from timely submitting its filing. First, MTAW lost two of three of its regulatory staff shortly before the deadline. The first staff member left the company with no warning and no advance notice in mid-August 2013. The second staff member, MTAW's Regulatory Manager, notified the company in mid-September that he would be out of the office due to a surgery scheduled in early October 2013. Thus, shortly before MTAW's September 30, 2013 FCC Form 525 line count filing was due, the company's available regulatory staff decreased from three to one.

The loss of MTAW's critical personnel occurred as the company was working to comprehend and fulfill the annual high-cost reporting requirements associated with the new FCC Form 481,⁴ due on October 15, 2013.⁵ MTAW notes that, due to the delay in approval by the Office of Management & Budget for the new FCC Form 481, the FCC Wireline Competition Bureau (the "Bureau") did not announce the October 15, 2013 filing deadline until August 6,

⁴ See *In the Matter of Connect America Fund*, WC Docket No. 10-90, Order, DA 13-1348, 28 FCC Rcd 8360, 8361, ¶ 4 (Wireline Comp. Bur. 2013) (waiving the FCC Form 481 filing deadline on its own motion in the absence of Office of Management & Budget approval for the new form).

⁵ See *Wireline Competition Bureau Announces Filing Deadline of October 15, 2013 for Eligible Telecommunications Carriers to File High-Cost and Low-Income Annual Reports, and Announces Filing Deadline of December 16, 2013 for States and ETCs to File Annual Use Certifications*, WC Docket Nos. 10-90 and 11-42, Public Notice, DA 13-1707, 28 FCC Rcd 11252 (Wireline Comp. Bur. 2013).

2013,⁶ and USAC did not conduct its first webinar providing instructions for completing the form until August 15, 2013.⁷ This left a relatively short window from the time that MTAW lost its first and second regulatory staff members for the company to evaluate the new requirements, complete its information-gathering, review the data, and meet the filing dates for both the September 30, 2013 FCC Form 525 line count filing and new annual FCC Form 481 filing.

Finally, MTAW was conducting a major financial software implementation during August and September 2013. Because of the major scope of the software implementation, MTAW did not immediately identify an error that occurred in the company's internal tracking system which resulted in the September 30, 2013 FCC Form 525 filing being marked as complete, even though the form had not been filed with USAC.

MTAW emphasizes that, despite the challenges the company faced with respect to its September 30, 2013 FCC Form 525 line count filing, upon learning that the line count information had not been timely filed, the company promptly submitted its filing to USAC within fourteen business days of the filing deadline.⁸ After discovering the late filing, MTAW reviewed and modified its internal procedures. Specifically, MTAW has developed an internal procedure that requires a second person to monitor the company's internal tracking system to confirm that any FCC Form 525 line count filing marked as complete in the system has actually been filed with USAC. MTAW understands the importance of timely filing its FCC Form 525 line count data and promptly implemented this confirmation procedure to ensure that future line count filings are made in accordance with the Commission's rules.

⁶ *Id.*

⁷ See USAC Website, Latest News, USAC to Present Webcast about FCC Form 481 on August 15, <http://www.usac.org/hc/tools/news/default.aspx> (Aug. 8, 2013) (last visited, Oct. 29, 2013).

⁸ MTAW filed its FCC Form 525 line count data with USAC on October 18, 2013.

II. GOOD CAUSE EXISTS FOR THE COMMISSION TO WAIVE SECTIONS 54.307 AND 54.802(A) OF ITS RULES IN THIS INSTANCE.

The Commission may waive its rules for good cause shown.⁹ Specifically, the Commission may exercise its discretion to waive a rule where the particular facts at issue make strict compliance with the rule inconsistent with the public interest.¹⁰ The Commission may take into account considerations of hardship, equity, and more effective implementation of overall policy on an individual basis.¹¹ In sum, a waiver of a filing deadline is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹²

The Bureau has found that good cause exists to waive high-cost universal service filing deadlines where the petitioning party: (1) promptly filed the required data within fourteen business days after the applicable filing deadline and (2) revised its internal procedures to ensure compliance in the future.¹³ MTAW acknowledges that at least one Bureau decision appears to more strictly apply the waiver standard by denying waivers for filings made after the applicable

⁹ 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹¹ *WAIT*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹³ See *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 11-1337, 26 FCC Rcd 11069, 11073-74, ¶ 12 (Wireline Comp. Bur. 2011) (*Petitioners I*); *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, WC Docket No. 96-45, Order, DA 11-560, 26 FCC Rcd 4908, 4910-11, ¶¶ 7-8 (Wireline Comp. Bur. 2011) (*Petitioners II*); *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, CC Docket 96-45, Order, DA 10-107, 25 FCC Rcd 843, 854-855, ¶ 22 (Wireline Comp. Bur. 2010) (*Petitioners III*); see also *In the Matter of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 08-2336, 23 FCC Rcd 15325 (Wireline Comp. Bur. 2008) (*Petitioners IV*).

filing deadline(s).¹⁴ However, MTAW notes that the petitioners in that case submitted their filings at least four weeks late, if at all.¹⁵ Notably, even where a petitioning party has filed its data more than fourteen business days after the applicable filing deadline, the Bureau has granted waivers of high-cost universal service filing deadlines where strict enforcement of the deadlines would cause the petitioner and its customers undue hardship.¹⁶

Consistent with Commission precedent, a waiver is justified in this case. Absent a waiver, MTAW will lose approximately \$1,000,000 in high-cost federal universal service funding. These funds are critical to MTAW's ability to serve its high-cost Alaska customers and the loss of such funding would be detrimental to the public interest. Failure to receive these funds would limit the telecommunications choices and mobility available to rural Alaska communities and compromise the ability of MTAW's customers to access critical health and safety services when away from their residences.

¹⁴ See, e.g., *In the Matter of Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 10-748, 25 FCC Rcd 4626 (Wireline Comp. Bur. 2010).

¹⁵ *Id.* (focusing on the fact that “[t]he petitioners did not cure their failure to meet the filing deadlines by promptly filing the required information...”). See also *In the Matter of Federal-State Joint Board on Universal Service Allo Communications Petition for Waiver of Section 54.307(c) of the Commission’s Rules et al.*, CC Docket No. 96-45, WC Docket No. 08-71, Order, DA 11-739, 26 FCC Rcd 6178 (Wireline Comp Bur. 2011) (noting among the reasons for the denial that some petitioners had submitted filings more than 40 days after the applicable deadlines, missed 18 separate filing deadlines and had previously filed for and received waivers of high-cost filing deadlines).

¹⁶ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service North River Telephone Cooperative Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d)*, CC Docket No. 96-45, Order, DA 06-2584, 21 FCC Rcd 14937, 14939, ¶ 5-6 (Wireline Comp. Bur. 2006) (*North River*) (expressing concern that the loss of funding could undermine the company’s network investments and “ability to ensure that customers [would] have and maintain access to adequate services”); *In the Matter of Federal-State Joint Board on Universal Service MCI, Inc. Petitions for Waiver of Sections 54.802(a) and 54.809(c) of the Commission’s Rules*, CC Docket No. 96-45, Order, DA 06-2581, 21 FCC Rcd 14926, 14929, ¶ 9 (Wireline Comp. Bur. 2006) (*MCI*) (“We are concerned that the loss of...funding could undermine MCI Metro’s future ability to serve customers in the high-cost areas of New York.”).

Similar to other petitioners for whom the Bureau has waived line count filing deadlines, MTAW has a history of compliance with the high-cost filing requirements.¹⁷ As with other waiver applicants, MTAW inadvertently missed the line count filing deadline.¹⁸ Most importantly, once MTAW discovered that it had missed the September 30, 2013 FCC Form 525 line count deadline, the company immediately took steps to ensure that the filing was made as expeditiously as possible.¹⁹

MTAW recognizes the importance of timely filed high-cost line count data. Although this particular confluence of events is unlikely ever to occur again,²⁰ MTAW has revised its internal procedures to ensure that the company's future FCC Form 525 line count filings will be timely submitted.²¹ Specifically, MTAW now requires a second independent check of the company's internal tracking system to confirm that each FCC Form 525 is timely filed. Thus, hardship and equity considerations support the grant of MTAW's requested waiver.²²

¹⁷ See, e.g., *Petitioners I*, 26 FCC Rcd at 11071, ¶ 7; *Petitioners II*, 26 FCC Rcd at 4910, ¶ 4; *Petitioners III*, 25 FCC Rcd at 850-52, ¶¶ 12-13, 15, 17-18; *Petitioners IV*, 23 FCC Rcd at 15328, ¶ 9; *North River*, 21 FCC Rcd at 14938, ¶ 5, *MCI*, 21 FCC Rcd at 14928, ¶ 6.

¹⁸ See generally *North River*; *MCI*; *Petitioners I-IV*.

¹⁹ *Id.* See also *In the Matter of Federal-State Joint Board on Universal Service Cellular South Licenses, Inc.*, CC Docket No. 96-45, Order, DA 06-1629, 21 FCC Rcd 9165, 9168, ¶ 9 (Wireline Comp. Bur. 2009) (emphasizing that “once Cellular South was alerted to its missed deadline, it immediately remedied the oversight....”).

²⁰ See *MCI*, 21 FCC Rcd at 14929, ¶ 9 (granting the waiver request, at least in part, because “MCI’s delay in filing the line count report was caused by unique circumstances that are unlikely to reoccur”).

²¹ See, *supra*, note 13.

²² *North River*, 21 FCC Rcd at 14939, ¶ 5 (finding that “[i]n this case,...considerations of hardship and equity – as well as North River’s longstanding history of submitting timely data – weigh in favor of granting the requested waiver” and stating that previous waivers had been granted to ““ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.””) (internal citations omitted); *MCI*, 21 FCC Rcd at 14929, ¶ 7 (“In this case,...considerations of hardship and equity, as well as MCI’s history of timely submitting data, weigh in favor of granting the requested waiver.”)

III. CONCLUSION

The loss of over approximately \$1,000,000 in high-cost funding would cause MTAW and its customers undue hardship. The loss of this funding would result in the decreased availability of telecommunications services to high-cost customers in Alaska and compromise access to critical health and safety services. The grant of this waiver request will benefit the public interest and is consistent with existing Bureau precedent regarding the waiver of high-cost line count filing deadlines. For the foregoing reasons, MTAW respectfully requests that the Commission promptly grant this petition for waiver of sections 54.307 and 54.802(a) of the FCC's rules and direct USAC to accept the company's September 30, 2013 FCC Form 525 line count filing.

Respectfully submitted,

MTA Communications, LLC d/b/a MTA
Wireless/Matanuska-Kenai, Inc.

By: /s/ Kristin K. Berkland

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November 6, 2013

DECLARATION OF WANDA TANKERSLEY

I, Wanda Tankersley, Chief Financial Officer of MTA Communications, LLC d/b/a MTA Wireless/Matanuska-Kenai, Inc., have read the foregoing Petition for Waiver of Sections 54.307 and 54.802(a) of the Commission's Rules and declare under penalty of perjury that the factual statements made therein are true and correct to the best of my personal knowledge, information, and belief.

Executed on November 5, 2013.

By: Wanda Tankersley

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